

Appl # 10/789,146

Rubach, James  
Reply to Office Action dated November 15, 2006

Filed 02-28-2004

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**REMARKS**

Examiner states that the application currently names joint inventors. Applicant submits that the current application does not and has never named joint inventors and therefore is in compliance of the obligations of 37 CFR 1.56.

**Examiner:** Claims 1 and 5-6 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Bednarz et al* in view of *Spector*.

**Response:** Regarding claim 1, the Examiner states that *Bednarz* discloses all of the features of the claimed invention except for the displaying of a foot during a jump takeoff but that *Spector* teaches this feature.

Applicant respectfully submits that the foot "position" that *Spector* discloses differs from the foot "position" that Applicant's current application discloses. *Spector* does not disclose the displaying of a foot during a jump takeoff. Rather, *Spector* only determines when a performer's feet are on the ground, thereby blocking the flow of light to the light detector. (col. 4, lines 2-4). The foot "position" detection ability of *Spector* is analogous to the foot detection ability of *Bednarz* that was the subject of rejection under 35 U.S.C. 102(b) of claim 1 found in the previous office action. *Spector*, like *Bednarz*, discloses only an indication of when a line threshold has been broken by a foot ("When the performer's feet are on the ground they intercept the beam and block the flow of light to detector," (col. 4, lines 2-4)), but gives no further indication as to the position of the jump foot. Essentially, *Spector* only determines whether or not the position of the performer's feet are a "hit" or a "miss" when compared to an exercise pulse. (col. 2, lines 38-44.). In other words, *Spector's* foot detection only operates on an "on" or "off" basis. The method for detecting the position of a foot during a jump takeoff found in claim 1 of the current

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application is an improvement from what is disclosed in *Spector* in that it allows the athlete to identify where his/her foot landed in relation to a particular light beam enabling the athlete to more easily make adjustments to his/her approach stride; whereas, what is disclosed in *Spector* only alerts the athlete that his/her foot has crossed the light beam threshold – scored as a “hit” or “miss” – but gives no indication as to how much of the athlete’s foot crossed that threshold.

For the reasons stated above, Applicant respectfully submits that Examiner was incorrect in “ascertaining the differences between the prior art and the claims at issue” as required *Graham v. John Deere*’s second factual inquiry, 383 U.S. 1, 148 USPQ 459 (1966), and as such claim 1 is not obvious in view of *Bednarz* and *Spector*.

Regarding claims 5 and 6, MPEP 2143.03 states that “[i]f an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious.” *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Therefore, since claims 5 and 6 are dependent on claim 1, and, based on the above, Applicant submits that claim 1 should not stand rejected under 35 U.S.C. 103(a) for being obvious, claims 5 and 6 are also nonobvious.

For the reasons stated above, Applicant respectfully submits that claims 1 and 5-6 are not obvious in view of *Bednarz* and *Spector*. Withdrawal of this rejection is respectfully requested.

**Examiner:** Claims 2-4 and 8 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Bednarz et al* and *Spector* as applied to claim 1 above, and further in view of *Stroman et al*.

**Response:** Regarding claim 2, the Examiner states that *Bednarz et al* and *Spector* disclose all of the features of the claimed invention except for collimating each one of said plurality of light detectors. However, for the reasons stated above pertaining to claim 1, Applicant respectfully submits that *Spector* does not disclose the displaying of the position of a foot during a jump takeoff. Additionally, MPEP 2143.03 states that “[i]f an independent claim is nonobvious under

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35 U.S.C. 103, then any claim depending therefrom is nonobvious." *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Regarding claim 3, the Examiner states that *Bednarz et al* and *Spector* discloses all the features of the claimed invention except for placing an aperture in front of each one of said plurality of light beams and light detectors. However, for the reasons discussed above pertaining to claim 1, Applicant respectfully submits the *Spector* does not disclose the displaying of the position of a foot during jump takeoff.

Regarding claim 4, the Examiner states that *Bednarz et al* and *Spector* discloses all the features of the claimed invention except for enabling said plurality of light beams and said plurality of light detectors sequentially. However, for the reasons stated above pertaining to claim 1, Applicant respectfully submits that *Spector* does not disclose the displaying of the position of a foot during a jump takeoff. Additionally, MPEP 2143.03 states that "[i]f an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious." *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Regarding claim 8, Applicant submits that claim 8 cannot be rejected because it was deleted by the Preliminary Amendment received by the USPTO on 03/14/06 in response to the Notice of Non-Compliant Amendment dated 02/24/06 and therefore the rejection of claim 8 should be withdrawn.

For the reasons stated above, Applicant respectfully submits that claims 2-4 and 8 are not obvious in view of *Bednarz*, *Spector*, and *Stroman*. Withdrawal of this rejection is respectfully requested.

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**Examiner:** Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Bednarz et al* in view of *Spector* and *Stroman et al*.

**Response:** Regarding claim 18, the Examiner stated that *Spector* teaches that it is known in the art to provide displaying means for displaying the presence or absence of the position of a foot during a jump takeoff. For the reasons discussed above pertaining to claim 1, Applicant respectfully submits that *Spector* does not disclose a displaying means for displaying the presence or absence of the position of a foot during jump takeoff. Rather, *Spector*'s displaying means is no more than a counter to record the number of "hits" or "misses" by the performer, ("Yet another object of this invention is to provide an EPT system which not only *counts* the number of times the performer is in step with the sound signals but also the number of times he is out of step and which separately displays these *counts*") (emphasis added) (col. 2, lines 20-24).

For the reasons stated above, Applicant respectfully submits that claim 18 is not obvious in view of *Bednarz*, *Spector*, and *Stroman*. Withdrawal of this rejection is respectfully requested.

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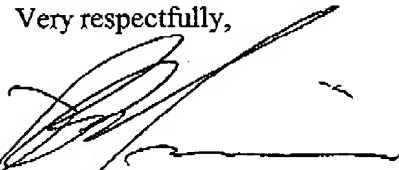
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**CONCLUSION**

It is submitted that claims 1-6 and 18-20 are now in condition for allowance. A Notice of Allowance is therefore respectfully requested.

Applicant has included form PTOL-413A and requests a telephone interview with Examiner. Due to the unexplainable statement of Examiner that the current application names joint inventors and Examiner's inclusion of claim 8's rejection when claim 8 has been previously cancelled, Applicant requests that Examiner's supervisor be present at the requested telephone interview.

Very respectfully,



Attorney Richard S Missimer

Patent Attorney for Applicant

USPTO Reg # 45,537

**Certification of Facsimile Transmission:** I certify that on the date below I faxed this paper to GAU 2877 of the US Patent and Trademark Office at (571) 273-8300.

2007 March 27



Attorney Richard S Missimer (USPTO Reg # 45,537)